

**Internal Revenue Service**

P.O. Box 2508  
Cincinnati, OH 45201

Release Number: **201322048**

Release Date: 5/31/2013

Date: 12/7/11

**Department of the Treasury**

**Employer Identification Number:**

**Contact person - ID number:**

**Contact telephone number:**

**LEGEND**

X= Name  
Y= Name

UIL: 4945.04-04

r dollars= Amount  
s dollars= Amount  
t dollars= Amount  
u dollars= Amount  
v= Quantity  
w= Quantity

Dear :

You asked for advance approval of your employer-related scholarship grant procedures under Internal Revenue Code section 4945(g). This approval is required because you are a private foundation that is exempt from federal income tax. You requested approval of your scholarship program to fund the education of certain qualifying students.

**Our determination**

We approved your procedures for awarding employer-related scholarships. Based on the information you submitted, and assuming you will conduct your program as proposed, we determined that your procedures for awarding employer-related scholarships meet the requirements of Code section 4945(g)(1). As a result, expenditures you make under these procedures will not be taxable.

Also, awards made under these procedures are scholarship or fellowship grants and are not taxable to the recipients if they use them for qualified tuition and related expenses (subject to the limitations provided in Code section 117(b)).

**Description of your request**

Your letter indicates you will operate an employer-related scholarship program. The purpose of your scholarship program is to provide scholarships to deserving dependent children of employees of X, its affiliates, and subsidiaries.

You shall recognize dependent children of X who meet the scholarship criteria and are deserving of distinction.

Qualified applicants for scholarships shall be dependent children of any regular employee of X and its subsidiaries who are high school seniors eligible to graduate in the current year. A child is a dependent for this purpose as defined in Section 152 of the Internal Revenue Code and properly reported as dependents on the employee's income tax returns. Further, employees include deceased employees who qualified as employees at the time of their death, or retired employees who qualified as such employees at the time of their retirement.

The requirement for the scholarship recipients as dependents on their employee parents' income tax returns shall be waived for the second through fourth year of scholarship eligibility, particularly if a scholarship recipient earns sufficient income to claim his or herself as a dependent on his or her own tax return.

The basis for your awards will be exceptional scholarship and potential for distinction in higher learning with a focus on business, engineering, math or science. Scholarships will be granted for full-time study toward a degree in business, engineering, math or science at a recognized four-year college or university located within the United States or described in Sections 117 and 170 of the Internal Revenue Code. The awards can be used for tuition, fees, books, supplies, and equipment required to pursue the study for which the scholarship is granted. The college or university must be one that normally maintains a regular faculty and curriculum, and normally has a regularly enrolled student body of students in attendance at the place where its educational activities are regularly conducted. Each recipient will be required to account for the proper expenditure of all scholarship awards and pay back awards for which an accounting of funds is not properly rendered.

In general, scholarships shall be for r dollars per year of eligibility, except that one Y will be selected for t dollars per year of eligibility. Scholarships may be granted to a recipient for a total of four years based on continuing eligibility as determined by the scholarship selection committee. The maximum amount for those awarded r dollars per year is s dollars while the maximum amount for Y is u dollars.

Eligible high school students must submit their completed applications by the end of February including all documents and information requested, such as high school transcripts, SAT and/or ACT scores, and essays. Applicants also will be asked to designate on their application form whether they wish to be considered based on their financial need. Fifty percent of the scholarships awarded will go to those students with the highest academic criteria who also request consideration and demonstrate financial need; the other fifty percent of the scholarships awarded will go to students with a greater emphasis on their academic criteria.

The determination of eligibility will be decided by your selection committee, designated by your directors at the regularly scheduled annual meeting of your directors. Special meetings of the directors may be called on an as-needed basis to fill vacancies or appoint additional members of this committee as the directors deem such necessary or desirable. Each year the board of directors shall select replacement scholarship selection committee members for those whose term on the committee has ended, or for those who have resigned or become unable to continue service on the committee for the duration of

their term, but only upon receipt of a written legal opinion that the proposed additional or new members of the committee do not jeopardize your tax free standing.

The selection committee will consist of persons who:

1. Are totally independent of X.
2. Are not employees or former employees of X.
3. Are knowledgeable in the education field with the background, knowledge and experience to properly evaluate potential applicants.
4. Have only the authority to grant awards up to a specified amount and period of study.
5. Have no relatives who are or have been a recipient of a scholarship award.

The scholarship selection committee shall select a chair, who shall be responsible for calling meetings, selecting the place and time for those meetings, and setting the meeting's agenda. The chair is also responsible for the necessary information, documentation, and other matters necessary to consider and select scholarship recipients in accordance with the policy at the meetings called for that purpose.

In determining which qualified applicants shall receive a scholarship or grant, the scholarship selection committee will consider the following criteria:

1. The student's academic criteria through a review of prior academic performance and record as exhibited by his or her high school's official transcript of grades, grade point average, and if available, class standing.
2. Scores on the Scholastic Aptitude Test (SAT) or American College Testing (ACT) college placement tests. The student applicant may submit either the SAT or ACT, or both for consideration.
3. An essay related to why the student applicant considers being a recipient scholar is important.
4. Motivation and character exhibited at a personal interview of the student.
5. Commendations and recommendations of faculty, school administrators, student advisors, program counselors, activity monitors, program sponsors and athletic coaches.
6. Class standing as compared to other students within the school's current graduating class.
7. Honors conferred upon the student by the school or other recognized institution.
8. Extracurricular activities during school including leadership in those activities such as captain of the baseball team, president of the Latin club, Chapter Treasurer of the Honor Society, class or student body officer, etc.
9. Non-school related activities and affiliations such as Girl Scouts, local hospital volunteer organizations, Red Cross, etc.
10. Financial need based on family size, income and the cost of colleges or universities that have accepted or will likely accept the student.

All awards will be based on uniform, objective and nondiscriminatory standards and judgment set by the scholarship committee.

For those candidates who request consideration based on financial need, the following criteria will be used: v percent weight based on academics, v percent based on essay, and w percent based on other factors with emphasis placed on the applicant's financial need. Of these candidates, one will be designated as Y and will receive a scholarship

for t dollars per year of eligibility. The remaining candidates will be considered on the following: w percent based on academics, v percent based on the essay, and v percent based on other factors.

The scholarship selection committee shall meet and consider each application and judge each applicant in accordance with the standards you have set. You will announce your scholarship awards for the upcoming fall semester each June.

Scholarship recipients will be asked for current transcripts and school standing at the end of each semester. Recipients will be subject to forfeiture for future grants in the event that:

- a. Any amount of the scholarship is used for purposes other than tuition, fees, books or expenses related to the academic program.
- b. The student fails to maintain a 3.0 GPA (on a possible 4.0 basis).
- c. The student does not maintain full time status.
- d. The student does not maintain good-standing status at the college or university where enrolled by virtue of poor grades or rule infractions.
- e. The student is expelled, asked to leave the university, or voluntarily abandons his or her studies.

Eligibility may be re-established if good standing status can be reestablished within one year, upon written notification and documentation to the panel.

Scholarships may be awarded for selected fields of study, any of which is consistent with X's businesses, but the applicant or student receiving the award must be free to pursue the course of study based on his or her free will. No consideration, however, can be given to the benefit of such study to X. Moreover, there can be no formal or understood commitment, undertaking or obligation of the recipients "other than enabling the recipients to obtain an education in their individual capacities and solely for their personal benefit".

### **Basis for our determination**

The law imposes certain excise taxes on the taxable expenditures of private foundations (Code section 4945). A taxable expenditure is any amount a private foundation pays as a grant to an individual for travel, study, or other similar purposes. However, a grant that meets all of the following requirements of Code section 4945(g) is not a taxable expenditure.

- The foundation awards the grant on an objective and nondiscriminatory basis.
- The IRS approves in advance the procedure for awarding the grant.
- The grant is a scholarship or fellowship subject to Code section 117(a).
- The grant is to be used for study at an educational organization described in Code section 170(b)(1)(A)(ii).

Revenue Procedure 76-47, 1976-2 C.B. 670, provides guidelines to determine whether grants a private foundation makes under an employer-related program to employees or children of employees are scholarship or fellowship grants subject to the provisions of Code section 117(a). If the program satisfies the seven conditions in sections 4.01

through 4.07 of Revenue Procedure 76-47 and meets the applicable percentage tests described in section 4.08 of Revenue Procedure 76-47, we will assume the grants are subject to the provisions of Code section 117(a).

You represented that your grant program will meet the requirements of either the 25 percent or 10 percent percentage test in Revenue Procedure 76-47. These tests require that:

- The number of grants awarded to employees' children in any year won't exceed 25 percent of the number of employees' children who were eligible for grants, were applicants for grants, and were considered by the selection committee for grants, or
- The number of grants awarded to employees' children in any year won't exceed 10 percent of the number of employees' children who were eligible for grants (whether or not they submitted an application), or
- The number of grants awarded to employees in any year will not exceed 10 percent of the number of employees who were eligible for grants, were applicants for grants, and were considered by the selection committee for grants.

You further represented that you will include only children who meet the eligibility standards described in Revenue Procedure 85-51, 1985-2 C.B. 717, when applying the 10 percent test applicable to employees' children.

In determining how many employee children are eligible for a scholarship under the 10 percent test, a private foundation may include only those children who submit a written statement or who meet the foundation's eligibility requirements. They must also satisfy certain enrollment conditions.

You represented that your procedures for awarding grants under this program will meet the requirements of Revenue Procedure 76-47. In particular:

- An independent selection committee whose members are separate from you, your creator, and the employer will select individual grant recipients.
- You will not use grants to recruit employees nor will you end a grant if the employee leaves the employer.
- You will not limit the recipient to a course of study that would particularly benefit you or the employer.

**Other conditions that apply to this determination:**

- This determination only covers the grant program described above. This approval will apply to succeeding grant programs only if their standards and procedures do not differ significantly from those described in your original request.
- This determination is in effect as long as your procedures comply with sections 4.01 through 4.07 of Revenue Procedure 76-47 and with either of the percentage

tests of section 4.08. If you establish another program covering the same individuals, that program must also meet the percentage test.

- This determination applies only to you. It may not be cited as a precedent.
- You cannot rely on the conclusions in this letter if the facts you provided have changed substantially. You must report any significant changes to your program to the Cincinnati Office of Exempt Organizations at:

Internal Revenue Service  
Exempt Organizations Determinations  
P.O. Box 2508  
Cincinnati, OH 45201

- You cannot award grants to your creators, officers, directors, trustees, foundation managers, or members of selection committees or their relatives.
- All funds distributed to individuals must be made on a charitable basis and further the purposes of your organization. You cannot award grants for a purpose that is inconsistent with Code section 170(c)(2)(B).
- You should keep adequate records and case histories so that you can substantiate your grant distributions with the IRS if necessary.

We have sent a copy of this letter to your representative as indicated in your power of attorney.

Please keep a copy of this letter in your records.

If you have questions, please contact the person listed at the top of this letter.

Sincerely,

Holly O. Paz  
Director, Exempt Organizations  
Rulings and Agreements